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**IN THE
COURT OF APPEALS OF INDIANA**

JOSEPH J. LAROSA,)	
)	
Appellant-Petitioner,)	
)	
vs.)	No. 49A02-0701-CV-2
)	
DENISE L. LAROSA,)	
)	
Appellee-Respondent.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Deborah Shook, Master Commissioner
Cause No. 49D05-9811-DR-1632

June 25, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Joseph LaRosa appeals the trial court's order denying his motion to correct error.

He raises the following four restated issues for our review:

- I. Whether the trial court erred in failing to order LaRosa's former wife to vacate the marital residence;
- II. Whether the trial court's order modified the parties' property settlement agreement;
- III. Whether the trial court erred in valuing the marital property; and
- IV. Whether the trial court erred in ordering LaRosa to pay \$960.00 of his former wife's attorney fees.

We affirm.

FACTS AND PROCEDURAL HISTORY

In July 2000, the trial court dissolved the marriage of Joseph ("Husband") and Denise ("Wife") LaRosa and approved their property settlement agreement ("Agreement"), which provides in relevant part as follows:

Section 2.2 "In Kind" Support: Husband shall pay child support "in kind" by making the mortgage payment for the marital residence (\$1,000 + or – per month which includes escrow for taxes and insurance) for a period of five (5) years from the date of the Decree. The mortgage payment shall be made by Husband directly to the mortgage creditor. Wife shall be responsible for all utilities . . . [as well as]. . . maintenance and upkeep on the marital residence which shall be maintained in substantially the same condition as it is currently. Husband shall pay the cost of major repairs or replacement of only the furnace, air conditioning, roof and/or hot water heater. If there is a dispute about the necessity of a repair, it shall be submitted to mediation.

* * *

Section 3.2 Marital Residence: At the expiration of five (5) years Wife shall have the option to purchase the residence at its then fair market value (less 25%) as determined by Michael C. Lady Appraisal Co., Inc. If Wife desires to exercise her option, she must do so by written notice at least 120 days prior to the expiration of the five (5) year term. Upon receipt of notice Husband

shall engage Michael C. Lady Appraisal Co., Inc. to perform the appraisal. Mr. Lady's opinion shall be conclusive as to value. The existing mortgage must be satisfied as a condition of closing. Closing shall occur not later than the expiration of the five (5) year term. If Wife does not exercise her option and close as provided herein she shall vacate the premises at the end of the five (5) years. . . .

Appellant's Appendix at 29, 32.

In July 2003, Wife notified Husband in writing that she wanted to exercise her option to purchase the marital residence. She asked Husband to advise her how to proceed. Husband responded that the home was not available for her to purchase until July 2005. In May 2006, Wife filed a Motion to Compel Compliance with the dissolution decree and Agreement. In the motion, Wife stated that she gave Husband notice that she wanted to purchase the residence as set forth in Section 3.2 of the Agreement. She had also obtained a mortgage and was willing and able to close. According to Wife, Husband had chosen Merrill Moores to appraise the property, but was refusing to close on it. Wife asked the court to compel Husband to comply with the Court's prior order and to award her attorney fees for the necessity of her motion.

Following a hearing, the trial court found and ordered as follows on July 24, 2006:

(1) Respondent notified Petitioner approximately 2 years prior to the end of the 5 year period agreed to by the parties of her intention to purchase the real property at issue . . . in writing. Wife's notice was timely.

* * *

(7) Merrill Moores was chosen by husband as the replacement appraiser and through no fault of Petitioner or Respondent, his appraisal was not complete until nearly 6 months after the request to value the property.

(8) Merrill Moores['] appraisal of the property assesses a value of \$126,000.00 less dollar for dollar the cost of a new roof, plaster and sump

pump repair.

(9) Another appraisal completed by Charles Green appraised the value of the property at \$146,500.00; however he acknowledged he did not view the current interior condition nor the laundry room condition.

(10) Mr. Green testified an additional \$2500.00 for replacement windows and \$1500.00 for the acreage should be added to Moore's appraisal.

(11) Moores testified he did not notice the replacement windows.

* * *

Conclusions:

(1) The Respondent timely notified Petitioner of her wishes to exercise the option to purchase the real property and took steps for the purpose of exercising her right.

(2) Petitioner's actions indicate an unwillingness to cooperate with respect to this issue.

(3) The value of the property in its present state is \$130,000.00 less the roof repair and less damage.

(4) Respondent may purchase the real property at issue for 75% of \$130,000.00 (the "as is" value) less the cost of repair/replacement of the roof and less the cost of any resultant damage to the property which occurred as a result of Petitioner's failure to repair/replace the roof in a timely manner. Respondent to contract for the needed repairs/replacement.

* * *

(7) Upon an affidavit of attorney fees expended for Respondent's Motion to Compel Compliance with the Decree, the Court will Order the Petitioner to pay that portion of Respondent's Attorney Fees.

Appellant's Appendix, at 19-21.

Three days later, Wife's counsel filed an Affidavit in Support of Attorney Fees, which included an itemized statement for more than \$3,000.00 in attorney fees. The affidavit

explained that nearly all of the work counsel performed in mediation, at the June 26, 2006 hearing, and in preparation of the post-hearing memorandum concerned enforcement of Section 3.2 of the Agreement. The affidavit further explained that eighty percent to eighty-five percent of the remainder of the time concerned the enforcement of Section 3.2 as well. The following week, the trial court ordered Husband to pay Wife's attorney \$960.00 in attorney fees.

Husband filed a motion to correct error challenging the July 26, 2006 order as well as the award of attorney fees. The trial court denied the motion after a hearing, and Husband appeals.

DISCUSSION AND DECISION

A trial court has broad discretion to determine whether to grant or deny a motion to correct error. *Supervised Estate of Williamson v. Williamson*, 798 N.E.2d 238, 241 (Ind. Ct. App. 2003). We will reverse only for an abuse of that discretion. *Id.* An abuse of discretion occurs if the trial court's decision was against the logic and effect of the facts and circumstances before the court or if the court misapplied the law. *Id.*

I. Trial Court's Failure to Order Wife to Vacate Marital Home

Husband first argues that the trial court erred in denying his motion to correct error on the ground that the court erred in failing to order Wife to vacate the marital residence. Specifically, Husband contends that because the parties did not close on the sale of the home within the five-year period required in the Agreement, pursuant to the terms of the Agreement, the trial court should have ordered Wife to vacate the home.

The Agreement provides in relevant part as follows:

At the expiration of five (5) years Wife shall have the option to purchase the residence If Wife desires to exercise her option she must do so by written notice at least 120 days prior to the expiration of the five (5) year term. . . . If Wife does not exercise her option and close as provided herein she shall vacate the premises at the end of the five (5) years.

Appellant's App. at 32.

The trial court concluded that Wife timely notified Husband of her intent to exercise her option of purchasing the house in writing in July 2003, and that she was unable to close within the five-year period because the appraisal took six months to complete. Our review of the evidence presented at the hearing reveals that in July 2003, Wife notified Husband in writing that she wanted to exercise her option to purchase the home. This notice complied with the Agreement's requirements of written notice at least 120 days prior to the expiration of the five-year term. The evidence further revealed that Husband hired appraiser Merrill Moores ("Moores") in June 2005, prior to the expiration of the five-year period. Moores, however, delayed in completing the agreement. According to Moores, the delay was not attributable to either party. In fact, Husband admitted at the hearing that Wife's failure to close on the property within the five-year time period was not her fault. Under these circumstances, the trial court did not err in failing to order Wife to vacate the residence or abuse its discretion in denying Husband's motion to correct error.

II. Modification of the Agreement

Husband also argues that the trial court's July 24, 2006 order improperly modified the Agreement. In support of his argument, Husband directs us to *Poppe v. Jabaay*, 804 N.E.2d 789 (Ind. Ct. App. 2004), *trans. denied; cert. denied*, 543 U.S. 1164 (2005). There, a

property settlement agreement provided specific requirements and conditions under which husband or wife could purchase the marital residence. Neither husband nor wife complied with the agreement, and the commissioner appointed to sell the residence accepted an offer from a third party. Upon wife's motion, the trial court subsequently ordered the sale of the residence to wife, and Poppe appealed. This Court agreed with Poppe that the trial court improperly modified the Jabaays' agreement when it permitted wife to purchase the residence under terms different from those in the agreement. *Id.* at 794.

However, the facts before us are distinguishable from those in *Poppe*. Here, Wife complied with the Agreement. The trial court did not improperly modify it or abuse its discretion in denying Husband's motion to correct error.

III. Valuation of the Marital Estate

Husband also argues that the trial court erred in valuing the marital residence at \$130,000.00. The trial court has broad discretion in valuing property in a dissolution action and its valuation will be disturbed only for an abuse of that discretion. *Granzow v. Granzow*, 855 N.E.2d 680, 685 (Ind. Ct. App. 2006). So long as there is sufficient evidence and reasonable inferences to support the valuation, an abuse of discretion does not occur. *Id.* We will not reweigh the evidence and will consider it in the light most favorable to the judgment. *Id.*

Here, our review of the evidence reveals that Moore valued the property at \$126,000.00. However, further testimony revealed that Moore failed to consider the \$2500.00 Thermopane windows and an additional \$1500.00 for the large lot size. When this \$4000.00 that Moore failed to consider is added to his appraisal of \$126,0000.00, the value

of the house is \$130,000.00, which is what the trial court concluded. These figures support the trial court's valuation of the house. We find no error in the valuation and no abuse of discretion in the denial of the motion to correct error.

IV. Attorney Fees

Lastly, Husband argues that the trial court erred in awarding \$960.00 in attorney fees to Wife because "Husband is being ordered to pay fees for an action that is not of his making. Husband was never notified by Wife, in writing, that she intended to exercise her option to purchase the house. Wife should have been ordered to vacate the residence under the Property Settlement Agreement based upon her failure to meet the terms of the Agreement." *Appellant's Br.* at 20. We have already determined that Wife properly exercised in writing her option to purchase the house and was not required to vacate it. This argument therefore fails.

Husband also argues that the trial court erred in awarding attorney fees because there was "no evidence concerning . . . Wife's itemized attorney fees." *Appellant's Br.* at 19. However, our review of the evidence reveals Wife's affidavit in support of attorney fees included an itemized statement for more than \$3,000.00 in attorney fees, most of which concerned the enforcement of Section 3.2 of the Agreement. This evidence supports the trial court's order awarding Wife \$960.00 in attorney fees, and the trial court did not abuse its discretion in denying the motion to correct error.

Affirmed.

DARDEN, J., and MATHIAS, J., concur.

